IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1243 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

SUPDT.OF CUSTOMS,JAMNAGAR

Versus

SMT.AISABAI WIFE OF YUSUF HAJIABDULLA BHAYA

Appearance:

MR BB NAIK for Petitioner

MR SH SANJANWALA for Respondent No. 1

MR AJ DESAI APP for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 07/07/2000

C.A.V. JUDGEMENT

This petition under Articles 226 and 227 of the Constitution of India and Section 482 of the Code of

Criminal Procedure prays for setting aside the judgment and order dated 6.5.1988 passed by the learned Sessions Judge, Jamnagar in Criminal Revision Application No.25 of 1987 whereby the order of the learned Chief Judicial Magistrate, Jamnagar issuing process against respondent No.1 in Criminal Case No.1985 of 1987 was quashed.

2. The relevant facts in brief are that, on 13.12.1985, a truck loaded with lime stone bags concealing 62 packets of goods of foreign original was intercepted and brought to the office of the District Superintendent of Police, Jamnagar. The officers of the Customs department and the Directorate of Revenue Intelligence seized the goods of foreign origin valued at Rs.91,80,100 under a panchnama. The investigation revealed that the said contraband goods was brought in a ship owned by the respondent No.1 and, accordingly, the complaint was filed against the accused persons for the offences punishable under Section 135 of the Customs Act, 1962. The learned Chief Judicial Magistrate issued process against all the accused persons by the order, which was challenged by filing Revision Application No.25 of 1987 in the Court of the learned Sessions Judge, Jamnagar who, after hearing the parties, allowed the revision application as far as respondent No.1 was concerned. That judgment and order dated 6.5.1988 passed by the learned Sessions Judge, Jamnagar is impugned in this petition mainly on the ground that the vessel, in which the contraband goods was smuggled, was owned by her. The allegation against her was that she had knowingly allowed the vessel to be used for the illicit activities and the original accused No.1 was her husband.

3. An affidavit on behalf of respondent No.1 is filed to state that in the adjudication proceedings held by the Department of the petitioner in respect of the same matter, a penalty of Rs.5,000 was imposed upon respondent No.1 and her vessel was confiscated with a redemption fine of Rs.40,000. Against that order of adjudication, respondent No.1 filed an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) which has been allowed and the order of penalty of Rs.5,000 and confiscation of the vessel has been set aside. It is held by the Tribunal that the said vessel of respondent No.1 could not be connected with the alleged seizure. Thus, it is contended that as respondent No.1 has been duly exonerated in the departmental proceedings, the original complaint filed by the Department in the criminal Court was not sustainable and deserves to be dismissed in the interest of justice. A copy of the order No.4754-55/97-WRB dated 24.10.1997 of

the CEGAT, Mumbai is placed on record. It is held therein that there is no nexus with the vessel and the contraband goods and, as far as the appellant therein was concerned, the appeal had to be allowed. It is also observed that there has been no investigation worth the name about the vessel.

4. On these facts and relying upon the judgment of the Hon'ble Supreme Court in G.L.DIDWANIA v. INCOME TAX OFFICER [1999 (108) ELT 16 (SC)], it is submitted that when the allegations were negatived by the Appellate Tribunal, the criminal proceedings cannot be sustained. It is also submitted on behalf of the respondent that, as held by the Hon'ble Supreme Court in P.S.RAJYA v. STATE OF BIHAR [1996) 9 SCC 1], the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. In the case before the Hon'ble Supreme Court, as also happens in the instant case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. And if the identical charge could not be established in a departmental proceeding, there is no point in prosecuting the respondent in a criminal proceeding.

5. The learned counsel appearing for the petitioner has conceded the factual position that the appeal before the CEGAT was in respect of the same goods and the same incident of interception of the smuggled goods. It is also conceded that in a development subsequent to the filing of the present application, the CEGAT has held as mentioned earlier. In fact, the order of the CEGAT has quoted the finding recorded by this Court in another proceeding as under:

> "This shows that even if some goods were transported from the vessel after it landed at Salaya and were taken to the Wadi of the detenu, it cannot be said that the goods which were recovered from the truck were the goods which were transported from the vessel after it landed, to the Wadi of the detenu. The gist of intelligence dated 15.12.1985 a copy of which is at Ex.81 in the compilation supplied to the detenu is to the effect that after the vessel landed on 14.12.1985, the goods were transported to the Wadi of Jusab Haji. Taking this intelligence at its face value, it is difficult to connect the goods which were recovered from the truck with the goods which were smuggled by this vessel and transported to the Wadi of Jusab

> Haji as per the intelligence report dated 15.12.85. The intelligence report also does not in any way directly or indirectly show that the goods which were recovered from the truck were those which were imported by the vessel which landed at Salaya on 14.12.1985."

The learned counsel for the petitioner has also conceded the legal proposition propounded in the judgment referred hereinabove.

6. Under the circumstances and in view of the facts as above, the impugned judgment and order quashing the trial Court's order issuing process against respondent No.1 has to be sustained. Accordingly, the petition is rejected. Rule is discharged with no order as to costs.

Sd/-

(KMG Thilake)

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